


Legal Orientation MHDS Commission



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General

Mission and Authority

- A board's mission is always a public purpose. When serving on a board, you are representing the citizens of Iowa. Be inclusive and listen, but always make decisions with the board's public purpose in mind.
- Boards are created by statutes, sometimes called an "enabling act." Boards only have that authority granted by law.
- There are laws beyond the statute that creates the board that guide the board. Iowa Code 225C.6, governing Mental Health and Disabilities Services Commission.
- The law may be very specific about how decisions shall be made or may grant a board discretion within specified limits. Boards may not expand their authority beyond that granted by law.
- New members should read the laws governing the board several times. New members should also bring a copy of the main laws governing the board to each meeting.
- Although it is good to look to staff, other board members, prior minutes of meetings, and websites as a source of information, board terms are staggered because new board members bring a new perspective and vitality to the board. New board members should not rely exclusively on what others say the mission or authority of the board is.

Rule Making

- Most boards have rule making authority. The rules must be authorized by and consistent with statutes. These rules are in a very real way the board's laws.
- Rulemaking is a powerful authority. The rules must be consistent with statutes. Rules are intended to be public facing, meaning they are essential to inform the public about benefits or programs. In order to accomplish these goals, the rules should be:
 1. Easy to read and understand.
 2. Tied to specific needs and objectives.
 3. Sensitive to costs. Benefits should outweigh costs.
 4. Effective.
 5. Developed with input by those affected.
 6. Both necessary and sufficient. Remember to ask if the provision is needed, and avoid creating regulations that go beyond what is needed to accomplish the goal.
 7. Fair. Rulemaking power should be used wisely.
- The Governor, Legislature, Attorney General, and the public all have a role to play when boards adopt rules. There are many checks and balances involved. All boards and other agencies review rules on a five-year rolling cycle.

Road Map



Open Meetings & Open Records



Conflicts of Interest



Lobbying

Iowa Open Meetings Law

Iowa Code Chapter 21 is Iowa's Open Meetings Law

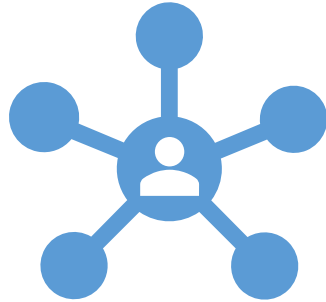
In general, all meetings of governing bodies are open to the public. There are limited exceptions wherein a governing body may go into closed session.

The public may also use cameras or recording devices at any open meeting.

Governing bodies may have rules for conduct of meetings to ensure an orderly meeting.

Open meetings law requires the public be given notice of meetings of governmental bodies and prescribes the procedure for publishing the notice.

What constitutes a meeting?



Any gathering (in person or electronically), formal or informal of a majority of the members of a governmental body where there is deliberation/action on any matter within the scope of the governmental body's policy making duties



This does not include a gathering for purely social or ministerial purposes when there is no discussion of policy and there is no intent to avoid the purpose of the open meetings law

Board Meeting: Discussion

- According to Iowa Code sec. 21.4, a tentative agenda must be posted twenty-four hours prior to an open meeting. Unless an emergency requires immediate action, only matters included on the tentative agenda may be discussed at a meeting.
- Emergency situations requiring immediate action are very rare. If something new comes up, the topic should normally be placed on the agenda for the next meeting.
- Governmental bodies should apply these two rules of thumb to determine what discussion or action is permitted under the scope of items on a tentative agenda:
 1. Ordinary meaning: Words in the tentative agenda should be measured by the meaning to a typical citizen or member of the news media. Do the words convey what topics will be discussed at the meeting?
 2. Sufficient detail: The sufficiency of the detail on the tentative agenda should be viewed in the context of surrounding events. Did the agenda give the public a full opportunity to participate? Factors in assessing the opportunity for participation may include whether the topic had been on a previous agenda and whether the meeting was widely publicized.
- Spirited discussion may trigger exciting new ideas, but public bodies must be sure that the tentative agenda provides reasonable notice to the public in ordinary terms and in sufficient detail. Rarely, and only if an emergency exists, should a body discuss and vote on a matter not included on the tentative agenda.

Board Meeting: Minutes

- Minutes of a board meeting create a permanent record of who met, when they met, what they discussed, what they decided, and by what votes.
- Accurate minutes are a key tool for conducting the public's business in an open and accountable way. Minutes are a vital tool for boards and minutes are a crucial way for citizens to review public action taken on their behalf.
- Minutes of open sessions must always include:
 1. The date, time, and place of a meeting.
 2. Which members were present.
 3. Actions taken, with sufficient information to reflect members' votes.
- If applicable, open session minutes shall also reflect:
 1. If the meeting was held on less than twenty-four hours' notice, an explanation of why it was impossible or impracticable to provide more notice.
 2. If the meeting was held at a time or place not reasonably accessible to the public, an explanation of why it was impossible or impracticable to meet at an accessible time or place.
 3. If the meeting was held electronically (by telephone or videoconference), an explanation of why it was impossible or impractical to hold the meeting in person.
- Minutes of a closed session shall include:
 1. The legal grounds for a closed session.
 2. The roll call vote of each member on the question of whether to go into closed session.
 3. Final action on any matter discussed in closed session. No final votes may be taken in closed session.

Board Meeting: Decision making

- No single board member makes decisions for the board. The board makes decisions by taking votes at a board meeting. In order to take a vote, a “quorum” of the board is needed. A quorum is the number of members entitled to vote who must be present in order for business to be transacted legally. The number is set by law, but the requirement can vary across different public bodies.
- A “quorum” may be a majority of board members or two-thirds of board members. Many boards’ enabling acts state what a quorum is, but if the law is silent, then a quorum is two-thirds of the members.
- As a general rule, for state boards, commissions, and councils, the Iowa Administrative Procedure Act requires no less than two-thirds of the eligible voting members to be present to constitute a quorum (Iowa Code sec. 17A.2(1)). Some statutes lower the requirement to a simple majority voting members. For county, city, or school governmental bodies, a quorum is a majority of the number of members fixed by statute (See Iowa Code sections 331.302(13), 363.6, and 279.4).
- Once a quorum is attained, most board action is taken upon a majority vote of those participating. There are important exceptions:
 1. Boards may only go into close session upon a public vote by two-thirds of the members or all members present.
 2. Discipline can only be imposed on a licensee by a majority vote of members or a higher percentage if required by law.

Board Meetings: Voting

Governmental bodies should conduct votes in a manner that ensures the public is informed and officials are accountable. The minutes of the meeting should reflect the vote, but they are no substitute for providing accountability during the open meeting.

- A voice vote is only acceptable if the vote is unanimous. With voice votes, it may be hard for observers to tell who voted or how they voted.
- A roll call vote shall be used whenever the board is voting to go into closed session or when any member abstains or votes “nay.”
- A secret ballot should never be used. The votes of all members must be public and clear during the meeting and in the minutes. This is true even when the vote constitutes the final action on a matter considered in closed session.

Electronic Meetings

I.C.A. § 21.8

A governmental body may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the governmental body complies with all of the following:

- a. The governmental body provides public access to the conversation of the meeting to the extent reasonably possible.
- b. The governmental body complies with section 21.4. For the purpose of this paragraph, the place of the meeting is the place from which the communication originates or where public access is provided to the conversation.
- c. Minutes are kept of the meeting. The minutes shall include a statement explaining why a meeting in person was impossible or impractical.

2. A meeting conducted in compliance with this section shall not be considered in violation of this chapter.

3. A meeting by electronic means may be conducted without complying with paragraph “a” of subsection 1 if conducted in accordance with all of the requirements for a closed session contained in section 21.5.

What is a closed session?

A closed session is when members of the public are not allowed to attend a part of a meeting.

A closed session is only allowed under limited circumstances including:

To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds. IA Code 21.5(1)(a)

What rules govern closed session?

To go into closed session either 2/3 of all members or all members present will need to vote to enter closed session.

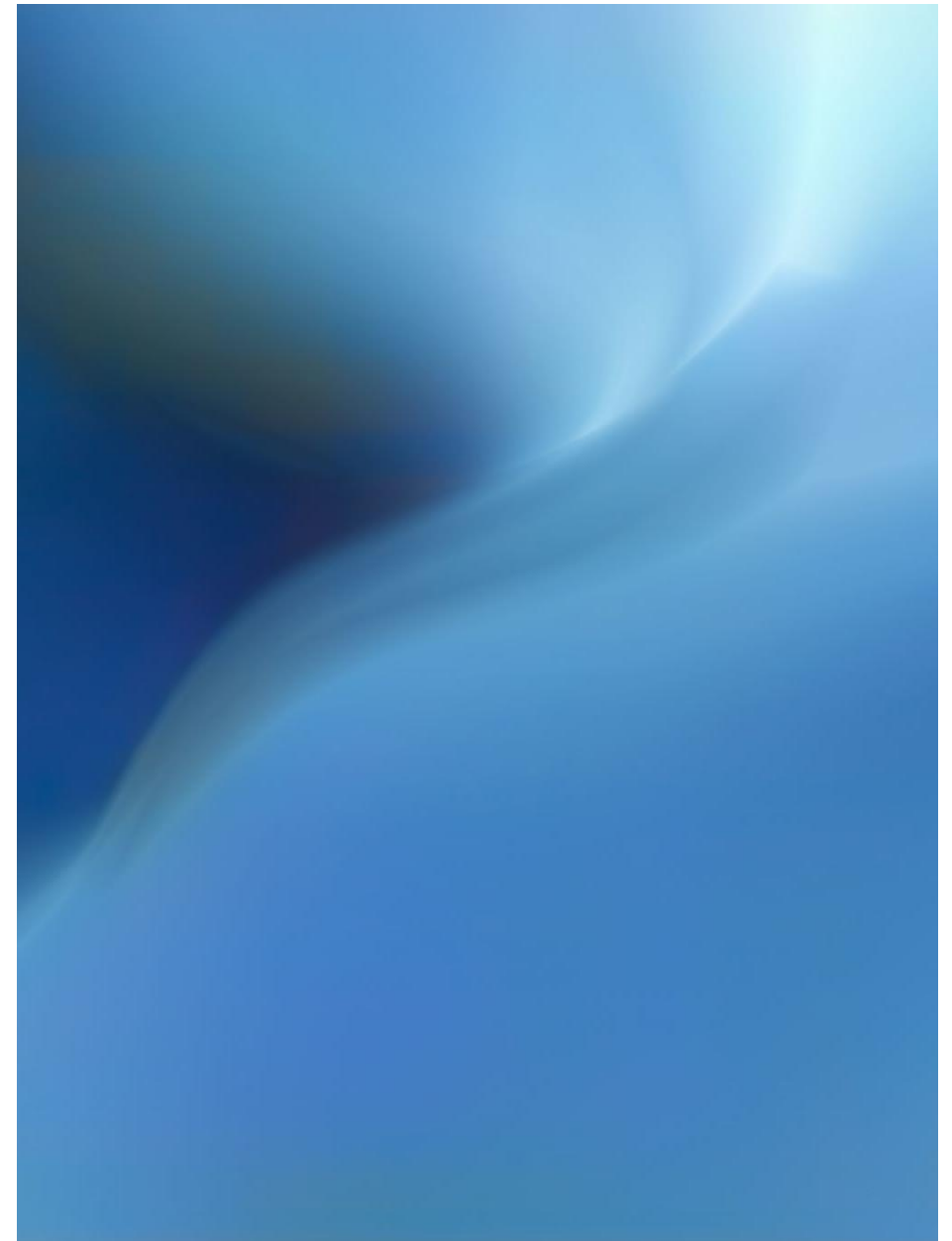
The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes.

A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.

Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session.

A governmental body shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also audio record all of the closed session.

The detailed minutes and audio recording of a closed session shall be sealed and shall not be public records open to public inspection. However, upon order of the court in an action to enforce this chapter, the detailed minutes and audio recording shall be unsealed and examined by the court in camera



Can I face personal liability for violations of these laws?

Yes, Iowa Code 21.6 sets forth penalties for violations of the open meetings law which include (Upon a finding by a preponderance of the evidence: the court

- Shall assess each member of the governmental body who participated in its violation damages in the amount of... However, if a member ... knowingly participated in such a violation, damages shall be in the amount of not more than two thousand five hundred dollars and not less than one thousand dollars...
- A member of a governmental body found to have violated this chapter shall not be assessed such damages if that member proves the member did any of the following:
 - (1) Voted against the closed session.
 - (2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this chapter.
 - (3) Reasonably relied upon a decision of a court, a formal opinion of the Iowa public information board, the attorney general, or the attorney for the governmental body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the Iowa public information board, the attorney general, or the attorney for the governmental body, given in writing.

Shall order payment of all costs and reasonable attorney fees ... to any party successfully establishing a violation...The costs and fees shall be paid by those members of the governmental body who are assessed damages under paragraph "a".

The court will also issue and order removing any member who has engaged in a prior violation of the meetings laws and was assessed damages.

What if I am
not sure ?

Ignorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding brought under this section. A governmental body which is in doubt about the legality of closing a particular meeting is authorized to bring suit at the expense of that governmental body in the district court of the county of the governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

When in doubt ask your AAG

Open Records Laws Iowa Code 22



Iowa has an open records law which generally provides that the public has the right to examine and copy public records.



There are provisions for confidential records under 22.7



Do not ask why someone wants a record-
legally irrelevant.



Cannot withhold records but do ask for help from AAG if you have questions.

Conflicts of Interest

- Conflicts of interest should be avoided, but how and when they arise can be unique to certain boards, especially because the law often requires the appointment of at least some persons who are regulated by the board. Anytime your objectivity may be impaired, seek advice.
- There is no requirement under common law to show actual motivation for a particular decisions by improper influence.
- Common Law Conflict of Interest Demands:
 - Complete loyalty of public servant to the public
 - Avoidance of making a choice between public duty and private advantage.
 - Avoidance of all private advantages, not merely financial ones.
 - Avoidance of potential conflicts, not limited to actual attempts to gain advantage.

Potential Sources of Conflict

Financial: Conflict of interest may arise where a public servant's private financial interest may be affected by their official actions. These interests must be more than insignificant and must differ from the interests of the general public.

Familial: Relationship ties may also create conflicts of interest. Normally, a familial relationship standing alone will not create a conflict absent some showing of the leveraging of the relationship, actual financial benefit, or outrageous or unjustly favorable treatment of a relative. However, if the relative is a spouse or unemancipated minor child, the potential for a direct benefit to the official can create a conflict of interest.

Other Governmental Positions: Persons serving multiple offices or employment in governmental positions may find the duties of these positions conflict. This may require abstention from activities that cause this conflict.

Conflicts of Interest Continued

Outside Employment: Employment outside of government duties is a potential source for conflict of interest. Iowa Code sec. 68B.2A applies to persons who serve or are employed by the state or political subdivisions and contains a non-exhaustive list of such conflicts including:

- a. Use of government time, facilities, equipment, badges and other evidence of employment that give employee or an immediate family member an advantage/benefit not available to the general public similarly situated that:
 - i. Are not available to other similarly-situated members of the public
 - ii. This does NOT apply to peace officers, firefighters, and EMS staff working off-duty with approval of agency
 - b. Receipt of money or consideration by employee or an immediate family member for performance of act in regular duties or during hours of work other than from political subdivision.
 - c. Engages in outside employment subject to official control, inspection, review or enforcement of duties of employment.
- Covered parties must immediately refrain from outside activities listed in (a) and (b). If engaged in outside activity that violates (c), official/employee must cease outside employment, publicly disclose the conflict, and refrain from official action affecting the outside activity.
 - Knowing and intentional violation is a serious misdemeanor. Iowa Code sec. 68B.34.
 - When encountering a conflict of interest, a public official should abstain from taking official action that will violate this restriction. Under common law, this would include abstaining from both voting and discussion. Disclosure of the conflict on the record may also be required.

Lobbying

Government ethics and lobbying are addressed in multiple sections but particularly Iowa Code § 68B.

The Commission meets the definition of “agency” and of “agency of state government” as set forth in Iowa Code § 68B.2.

Lobbying is NOT

Providing testimony or information upon request.

- Lobbyist does not mean: “Persons whose activities are limited to appearances to give testimony or provide information or assistance at sessions of committees of the general assembly or at public hearings of state agencies or who are giving testimony or providing information or assistance at the request of public officials or employees. Iowa Code 68B.2(13)(b)(4).
- Speaking to a legislator as a private citizen, not as an official representative of the Commission.

If the Commission Wishes to Lobby

The Chair or Vice Chair registering and advocating for the “official position” of the Commission. Iowa Code 68B.5A.

IAC 351-8.7(3)-(4) – need official letter from Commission appointing either Chair or Vice Chair to accompany registration.

For something to be an “official position” of the Commission, it needs to be on an agenda and put to a public vote.

Consult regulations on registration requirements, exemption, reporting requirements, funding restrictions, campaign restrictions, and the like.

Other Applicable Laws

Gift Law: Board members may not accept gifts (i.e., receiving something for free or for less than it is worth) from those they regulate or contract with. Ask you AAG or board staff for guidance on how the gift law and its many specific exceptions may impact you (Iowa Code sec. 68B.22-24).

Sales or Leases of Goods or Services: If you sell or lease goods or services to persons or entities regulated by your board, ask your AAG or board staff for guidance on laws governing these practices.

Who has the first question?

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